

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KIMBERLY A. GALBRAITH and DEPARTMENT OF VETERANS
AFFAIRS, LIVERMORE VETERANS ADMINISTRATION HOSPITAL,
Livermore, Calif.

*Docket No. 97-802; Submitted on the Record;
Issued December 9, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she developed an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

On August 8, 1995 appellant, then a 42-year-old medical records technician, filed a claim for stress alleging that she received a letter stating that she was being reassigned from her current position to the file room unit. Appellant felt that this was like a demotion, although she lost no grade level or pay, and stopped work on August 10, 1995 due to "stress."

On October 5, 1995 the Office of Workers' Compensation Programs requested further information from both appellant and the employing establishment, including a detailed description of the employment factors implicated in causing her condition. In response appellant submitted a report from a licensed clinical psychologist diagnosing an adjustment disorder with depression and anxiety in response to a letter appellant received regarding a transfer, a statement about an October 24, 1994 incident where a coworker's perfume made her ill, a social worker's statement regarding appellant being upset at the transfer and progress notes from a nurse/practitioner. Appellant had previously submitted 1994 medical paperwork regarding her perfume complaint.

By decision dated January 24, 1996, the Office rejected appellant's claim for an emotional condition finding that she had failed to establish that she developed the condition in the performance of duty. The Office found that appellant did not develop the claimed emotional condition in response to compensable factors of her employment.

On April 3, 1996 appellant filed a claim alleging that she developed an emotional condition on October 19, 1995 as a complication from harassment by her employer regarding an October 19, 1995 on-the-job injury. Appellant fell at work on October 19, 1995 and she alleged that the harassment consisted of being questioned regarding whether there were witnesses to her

fall, being sent letters while she was off work from the fall, being put on absent without leave (AWOL) status after her leave ran out, being constantly patronized and having people be condescending to her.

The employing establishment controverted appellant's claim on May 9, 1996 stating that since her October 19, 1995 accident she had only worked a total of three four-hour shifts on January 23 and 25, 1996 and on February 1, 1996, that the employing establishment corresponded with appellant at home to keep her informed that light duty was available and to make clear the consequences should she fail to return to duty, that appellant was placed in AWOL status due to her failure to follow leave procedures, that appellant altered a physician's slip when the physician had cleared her to return to work for eight hours, that her stress could not have begun October 19, 1995 because she received 45 days of continuation of pay plus appropriate claim forms for traumatic injury, and that appellant never performed the new assignment to which she had been transferred. The employing establishment further noted that appellant's alleged condition occurred since she had been away from work, that asking for witnesses to her October 19, 1995 fall was simply a standard question in the investigation, that the employing establishment correspondence with appellant since her injury was to assist her by providing instruction regarding proper procedures for requesting leave and for providing verification, that the AWOL accompanied an admonishment for her failure to follow proper procedures regarding leave, it denied that appellant had been patronized or treated in a condescending manner, and it denied that she had been harassed in any way. The employing establishment also submitted a package containing copies of correspondence sent to and received from appellant, Kaiser Permanente forms, appellant's leave usage records and appellant's job description.

By letter to appellant dated August 12, 1996, the Office requested further information including a detailed description of the employment factors implicated in causing her condition. In several responses appellant claimed that when she was furloughed she was instructed by her supervisor to apply for unemployment insurance, but that she was also being paid for annual leave, that she received a jury summons during her time away from work, that she was harassed by library service supervisors, that she left messages about what was going on, that she was being treated for lumbar spine discs, that she developed psychological problems related to her injury and employment procedures, that she could not call because of loss of hearing, that her roommate called, that she received a rude response from Ms. Evola, that Ms. Evola's attitude was unprofessional, that her knee condition was still a problem, that she was being constantly questioned, that her job as a coder was never done away with, that she was still under medical care, that protocol and procedures brought on "work-related stress," that she was harassed by questions and threats of termination or suspension, and that her problem had been ongoing since she had been informed of the take-over of Livermore by Palo Alto in the summer of 1995. Appellant also submitted medical evidence reporting her treatment and making recommendations.

By decision dated December 8, 1996, the Office rejected appellant's claim finding that she had failed to establish that she sustained an emotional condition in the performance of duty. The Office found that appellant had failed to establish that she developed any emotional condition causally related to compensable factors of her employment.

The Board finds that appellant has failed to establish that she developed an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

To establish appellant's claim that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.¹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.²

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not compensable where it results from such factors as an employee's fear of a reduction-in-force, his or her frustration from not being permitted to work in a particular environment or to hold a particular position, or his or her failure to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.³ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.⁴ In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his or her assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel

¹ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² See *Martha L. Watson*, 46 ECAB 407 (1995); *Donna Faye Cardwell* *supra* note 1.

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Artice Dotson*, 41 ECAB 754 (1990); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984).

matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.⁵

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.⁶ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁷ When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.⁸

In the instant case, appellant has failed to meet her burden of proof by failing to submit factual evidence identifying and supporting that compensable employment factors caused or contributed to her condition. Appellant alleged that she developed her emotional condition when she received a letter advising her of a transfer as part of the consolidation effort. The Board notes, as explained above, that disability from fear of a reduction-in-force or frustration at not being permitted to work in a particular environment or hold a particular position is not compensable under the Act.⁹ Job insecurity or the desire for a different job does not constitute personal injury sustained while in the performance of duty.¹⁰ Likewise, job transfers or reassignments are not compensable factors of employment.¹¹

Appellant also alleged employing establishment harassment regarding her October 19, 1995 on-the-job injury claim. The Board notes that the circumstances surrounding the processing of a compensation claim bear no relation to appellant's day-to-day or specially assigned duties are, therefore, not compensable factors of employment under the Act.¹² The Board further notes that such circumstances include the asking of questions, the seeking of witnesses, and the letters requesting further information and/or medical documentation.

⁵ *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

⁶ *See Barbara Bush*, 38 ECAB 710 (1987).

⁷ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁸ *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

⁹ *See supra* note 3.

¹⁰ *Id.*

¹¹ *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

¹² *Thomas J. Costello*, 43 ECAB 951 (1992); *George A Ross*, 43 ECAB 346 (1991).

Appellant alleged further harassment by being put on AWOL status, being patronized, being treated condescendingly or rudely, and by being threatened with suspension or discharge. The Board has held that actions of an employee's supervisor which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.¹³ However, in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.¹⁴ The Board finds that appellant has failed to submit any specific, reliable, probative and substantial evidence in support of her allegations. Appellant has the burden of establishing a factual basis for her allegations, however, the allegations in question are not supported by specific, reliable, probative and substantial evidence and have been refuted by statements from appellant's employer. The employing establishment refuted that anyone was rude, patronizing or condescending to appellant, or that anyone harassed appellant. It further explained why the AWOL status was appropriate and was not an error or abuse in the administration of a personnel matter. Additionally the employing establishment denied that it threatened appellant with suspension or termination, but explained that it provided her with information on the consequences of continued non-compliance with procedures, instructions and orders. Accordingly, the Board finds that these allegations cannot be considered to be compensable factors of employment since appellant has not established a factual basis for them.

As appellant has alleged no other compensable factors of employment and supported the allegations by factual evidence, she has failed to establish that she developed an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

¹³ *Sylvester Blaze*, 42 ECAB 654 (1991).

¹⁴ *Ruthie M. Evans*, 41 ECAB 416 (1990).

Accordingly, the decisions of the Office of Workers' Compensation Programs dated December 8 and January 24, 1996 are hereby affirmed.

Dated, Washington, D.C.
December 9, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member